

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MUHAMMAD KHAN,
Plaintiff,

v.

M. PAYTON, et al.,
Defendants.

Case No. 20-cv-03086 BLF (PR)

**ORDER DENYING MOTION TO
DISQUALIFY JUDGE**

(Docket No. 81)

Plaintiff, a state prisoner, filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983 against an officer at San Quentin State Prison. On April 11, 2023, the Court rescreened the first amended complaint, dismissed non-cognizable claims, and ordered service of the cognizable claims. Dkt. No. 52. Defendants filed a motion for summary judgment on November 15, 2023. Dkt. No. 72. Plaintiff's opposition is currently due by March 29, 2024. Dkt. No. 80.

Plaintiff has filed a "submission to disqualify" the undersigned pursuant to "USDC LCR 3-14 and 28 USC 144." Dkt. No. 81.¹ Plaintiff filed a previous motion requesting a

¹ He filed one document which included the case numbers for three pending matters before this Court: 20-cv-03086 BLF, 23-cv-06141 BLF, and 24-cv-00717 BLF. Dkt. No. 81. The same document was filed in each of these cases. The Court will only address the arguments therein that are relevant to this case.

1 different judge on October 3, 2023, Dkt. No. 69, which the Court construed as a motion for
2 recusal and denied because Plaintiff's arguments were not sufficient to overcome the
3 presumption that this Court has been fair and impartial in this action. Dkt. No. 70. The
4 Court will construe the instant motion as a second motion for recusal.

5 Plaintiff asserts that the undersigned is biased and prejudiced against him. Dkt. No.
6 81 at 1. He asserts that the Court's decisions seem to be "personal and always against"
7 him, and "always against" any substantive ruling in his favor. *Id.* He points to rulings in
8 favor of Defendants in a different matter regarding a labor dispute. *Id.* at 2. In this matter,
9 Plaintiff asserts that the undersigned would not let this matter be assigned to a magistrate
10 judge, insists that he contact counsel directly despite the lack of access to phone and email,
11 and has denied discovery. *Id.* at 2. He also asserts that the assignment of his cases to the
12 undersigned has not been impartial, and that it appears that the undersigned has "asked and
13 demanded the clerk of the court" to assign all of Plaintiff's cases to her over the past four
14 years. *Id.* at 3. He asserts that although he "cannot pinpoint exactly what BLF may have
15 against [him]," he is certain that he "has not and will not receive fair and impartial rulings"
16 in this Court. *Id.*

17 Motions to recuse a district court judge fall under two statutes, 28 U.S.C. § 144 and
18 28 U.S.C. § 455. The substantive standard for recusal under 28 U.S.C. § 144 and 28
19 U.S.C. § 455 is the same: Whether a reasonable person with knowledge of all the facts
20 would conclude that the judge's impartiality might reasonably be questioned. *United*
21 *States v. McTiernan*, 695 F.3d 882, 891 (9th Cir. 2012); *Yagman v. Republic Ins.*, 987 F.2d
22 622, 626 (9th Cir. 1993) (citation omitted). Sections 144 and 455 ask whether a reasonable
23 person perceives a significant risk that the judge will resolve the case on a basis other than
24 the merits. *Clemens v. United States Dist. Ct. for the Cent. Dist. of Cal.*, 428 F.3d 1175,
25 1178 (9th Cir. 2005). The reasonable person in this context means a well-informed,
26 thoughtful observer, as opposed to a hypersensitive or unduly suspicious person. *Id.*

27 As a federal judge is presumed to be impartial, a substantial burden is imposed on
28

1 the party claiming bias or prejudice to show that this is not the case. *See United States v.*
2 *Zagari*, 419 F. Supp. 494, 501 (N.D. Cal. 1976). Plaintiff has failed to overcome this
3 presumption because he has failed to point to any decision in this action which shows bias
4 or prejudice on the part of the undersigned. With regard to the assignment of this matter to
5 a magistrate judge, Plaintiff had an opportunity to consent to magistrate judge jurisdiction
6 at the outset of this matter but he failed to do so. Dkt. No. 12. Plaintiff also has alternative
7 means of contacting defendants' counsel other than by email or collect calls; he can send
8 counsel correspondence, as Plaintiff has done throughout this action in serving him papers,
9 and pay for the phone calls himself. Nor has the Court denied Plaintiff discovery based on
10 bias or prejudice. There have only been two rulings in this matter involving discovery: 1)
11 an order granting Plaintiff an extension of time to file opposition and denying his motion
12 to compel as moot, Dkt. No. 70; and 2) an order denying Plaintiff's motion to compel and
13 granting further extension of time to file opposition, Dkt. No. 80. The first motion to
14 compel was denied as moot because the parties had since come to an agreement regarding
15 the alleged discovery requests. Dkt. No. 76. The second motion to compel was denied
16 because Plaintiff failed to satisfy the meet and confer requirement of Federal Rule of Civil
17 Procedure 37(a) and his other requests were unjustified. Dkt. No. 80. Accordingly, the
18 basis for both these decisions was clearly explained and supported by the law. Moreover,
19 Plaintiff has been granted generous extensions of time to file an opposition in light of
20 pending discovery issues. *Id.* Accordingly, Plaintiff has failed to show that a reasonable
21 person would perceive a significant risk that the undersigned will resolve this case on a
22 basis other than the merits, *Clemens*, 428 F.3d at 1178, or overcome the presumption that
23 this Court has been fair and impartial in this action, *Zagari*, 419 F. Supp. at 501.

24 As for the assignment of his cases, the Local Rules provide that the Clerk shall
25 assign an action to a Judge pursuant to the Assignment Plan of the Court (General Order
26 No. 44). N.D. Civ. L.R. 3-3(a). Furthermore, the Local Rules state that the "Clerk may
27 not make or change any assignment, except as provided in these local rules or in the

1 Assignment Plan.” *Id.* Accordingly, this Court has no authority over how the Clerk
2 assigns cases.

3 Plaintiff may appeal the decision to the Ninth Circuit, but otherwise has no basis for
4 moving to recuse the Court from this matter. This second motion for recusal is **DENIED**.
5 Dkt. No. 81.

6 This order terminates Docket No. 81.

7 **IT IS SO ORDERED.**

8 **Dated: __March 7, 2024__**


BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California

25 Order Denying Mot. to Disqualify Judge
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